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ABSTRACT

This handbook was written by the Child Advocate Association in an attempt to clarify the laws and legal procedures governing child abuse and neglect. While some of the legal material is technical and is included to provide practical assistance to attorneys, the bulk of the material is intended for social workers, police, and school and medical personnel who are striving to effect positive change in the lives of abused and neglected children and their families. The handbook focuses on the possibilities and limitations of the social and legal systems which deal with this problem. A review of major medical and nonmedical indicators of child abuse and neglect is offered. Appendices on the Abused and Neglected Child Reporting Act, medical terminology, and example questions for a medical witness in a child abuse litigation case are provided. (Author/PK)

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CHILD ABUSE AND NEGLECT LEGAL HANDBOOK

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PREFACE

The Child Advocate Association is a non-profit, tax-exempt organization which provides legal and social service advocacy for abused and neglected children. Effective services for these children require interdisciplinary cooperation between the professions of medicine, social work and law. To this end, the Child Advocate Association provides legal and social work consultation to hospital-based, interdisciplinary child abuse teams and to state and community social service agencies throughout Cook County. In addition, the Association provides ongoing training and education to school administrators, teachers, medical and social service personnel, community organizations and volunteer groups. The Association also provides case advocacy for abused, neglected and sexually exploited children by representing them in juvenile proceedings, as well as criminal and divorce proceedings, when appropriate. The Association has recently expanded its services to include crisis counselling and treatment referrals for sexually abused children, and specialized training for professionals working with these children.

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INTRODUCTION 3

I. THE ABUSED AND NEGLECTED CHILD REPORTING ACT 5

A. Definitions of Abuse and Neglect 5
B. Who Must Report 6
C. When To Report 6
D. How a Report Is Made 6
E. Follow-up by the Illinois Department of Children and Family Services 7
F. Physician's Power To Take Custody 7
G. Privilege and Confidentiality 7
— Psychiatrist-Patient Privilege 8
— Psychologist-Client Duty of Confidentiality 9
— Social Worker Duty of Confidentiality 9
H. Immunity from Liability 9

II. IDENTIFICATION OF SUSPECTED ABUSED AND NEGLECTED CHILDREN 11

A. Medical Indicators of Suspected Abuse and Neglect 11
B. Non-Medical Indicators of Suspected Abuse and Neglect 12
— Factors Relating to the Parents 12
— Factors Relating to the Child 13

III. NEGLECT, ABUSE, DEPENDENCY: STATUTORY FRAMEWORK AND CASE LAW 15

A. Neglect 16
— Sufficiency of the Evidence 16
— Problems with Emergency Medical Care 17
— Problems with Anticipatory Neglect 18
B. Abuse 20
— Physical Abuse 20
— Mental Injury 20
— Sexual Abuse 21
C. Dependency 21

IV. COURT PROCEEDINGS 23

A. Service of Process 24
B. Petition for Adjudication of Wardship 24
C. Temporary Custody Hearing 25
D. Adjudicatory Hearing 27
— Witnesses 27
— Presentation of Evidence 28
— Use of Medical Testimony 30
— Use of Medical Records 31
— Use of Social Work Testimony 31
— Use of Clinical Services 32
E. Findings at the Close of the Evidence 32
— Neglect/Dependency and Wardship Findings 32
— Physical Abuse Finding 33
F. Dispositional Hearing 33
— Evidence 33
— Placement of the Child 33
— Order of Protection 35
G. Post-Dispositional Concerns 35
— Legal Custody and Guardianship 35

— Supplemental Petitions 35
— Termination of Proceedings 36

APPENDICES 37

A. The Abused and Neglected Child Reporting Act 37
B. Medical Glossary 41
C. Sample Questions for Medical Witness 43
D. 5-4 Supervision Order 45

INTRODUCTION

In 1874, nine year old Mary Ellen was found chained to a bedpost in her parents' apartment. Although Mary Ellen was seriously malnourished and severely bruised, no laws existed authorizing police or state agency intervention. In desperation, the church worker who accidently discovered Mary Ellen appealed for aid to the American Society for the Prevention of Cruelty to Animals. With the Society's help, Mary Ellen was removed from her dangerous environment under the laws of the state prohibiting cruelty to animals.

Today, laws do exist which specifically relate to the identification and protection of abused and neglected children. But, laws alone are not enough to prevent physical suffering, psychological abuse or sexual exploitation of children.

Each year, tens of thousands of children in the United States are victims of family violence; 5,000 of these children died last year as a direct result of trauma inflicted by parents or other caretakers. Physical injury and death, however, are only the visible manifestations of family dysfunction. Less visible, but as crippling, is the psychological damage to the child. Moreover, without therapeutic intervention, the abusive parenting model is repeated and abused children become abusive parents.

To stop this cycle, it is essential to identify children at risk and intervene on their behalf. However, this may be easier said than done. The laws and legal procedures governing the reporting of child abuse and neglect are complex and, in some instances, inconsistent. In addition, once an abuse or neglect report is made, the investigation which follows is often perceived by the family as a non-helpful and threatening scrutiny of their private affairs. Therefore, the offer of supportive social services may not be welcomed and is, in fact, frequently refused. Further, abuse or neglect is often only one of the many problems overwhelming a family. As a result, a number of agencies may be involved in a single case, adding to everyone's confusion and increasing the difficulty of intervening effectively on behalf of the endangered child.

Sometimes, the coercive power of the juvenile court is needed to insure the protection of the child. Yet, certain problems produce a trial setting in which it is often difficult for the court to discern the truth. First, the parents are faced with the allegation that their child has been abused or neglected, an allegation which, if proved, could result in the child's removal from the parents' custody. Even parents responsible for most severe forms of abuse litigate fiercely their right to continued custody. Second, the best witnesses, the children, are rarely able to testify on their own behalf as to the cause of their injuries or condition. Either the children are not competent to testify (over fifty percent of reported child abuse victims are under five years of age) or the experience of testifying against their parents in open court is too traumatic. Finally, a judge hearing child abuse and neglect cases may be faced with a docket containing close to one hundred matters requiring judicial attention. The caseworkers, the Assistant State's Attorneys, the Assistant Public Defenders, and the Guardians Ad Litem are comparably overworked. Yet, if the quantity of cases results in a loss in the quality of the fact-finding, a child's next trip home may be the last.

This handbook has been written by the Child Advocate Association in an attempt to clarify the laws and legal procedures governing child abuse and neglect. While some of the legal material is technical and is included to provide practical assistance to attorneys, the bulk of material is intended for social workers, police, school and medical personnel who are striving to effect positive change in the lives of abused and neglected children and their

families.

To successfully effect such change, it is important to understand both the possibilities and the limitations of the system. Too often, expectations are unrealistic and efforts misguided. The result is frustration, hopelessness and a conviction that the system cannot meet the needs of children or their families. Gaining an understanding of the process, problems and possibilities is the only way professionals in the field of child welfare can make the present system respond to the children and families it was designed to serve.

I. THE ABUSED AND NEGLECTED CHILD REPORTING ACT

Child abuse and neglect are generally committed in the home away from public view. Therefore, to protect children, the Illinois General Assembly passed the Abused and Neglected Child Reporting Act. Ill.Rev.Stat.1975, ch. 23, § 2051 *et seq.* This Act mandates the reporting of suspected child abuse and neglect by certain professionals likely to come in contact with children and establishes procedures for making and acting on such reports.

The following sections breifly explain the provisions of the Abused and Neglected Child Reporting Act. (See Appendix A for the text of the Act.)

A. DEFINITIONS OF ABUSE AND NEGLECT

Section 3 of the Abused and Neglected Child Reporting Act defines abuse as

> . . . any physical injury, sexual abuse or mental injury inflicted on a child other than by accidental means by a person responsible for the child's health or welfare.

and neglect as

> . . . a failure to provide, by those responsible for the care and maintenance of the child, the proper and necessary support, education as required by law, or medical or other remedial care recognized under State law, other care necessary for the child's well-being; or abandonment by his parent, guardian or custodian; or subjecting a child to an environment injurious to the child's welfare.

A careful reading of the statutory definitions of abuse and neglect (particularly of neglect) provides little help in determining whether an incident or a series of incidents actually constitutes abuse or neglect. The following list illustrates the kinds of situations the abuse and neglect definitions cover:

Abuse

1.	Physical abuse	bruises, scars, burns, head injuries, fractures, eye injuries, intra-abdominal injuries, human bites
2.	Sexual abuse	incest; sexual molestation, including vaginal, oral or anal intercourse, fondling, exposure

Neglect

1.	Physical neglect	abandonment; gross or repeated failure to meet a child's physical needs; gross lack of adequate supervision of child; repeated poisonings or accidents due to lack of appropriate supervision; sexual molestation or physical abuse due to neglect on part of parents in supervising child

2.	Failure to thrive	malnutrition not due to organic disease
3.	Medical neglect	failure to seek or inappropriate delay in seeking medical care for a significant problem; failure to comply with necessary treatment and follow-up of serious medical problems

Mental Injury

1.	Psychological abuse	grossly demeaning and/or hostile behavior which undermines a child's sense of security and self-worth (active parental behavior)
2.	Emotional neglect	gross failure to provide for the basic emotional needs of a child (passive parental behavior)
3.	Treatment neglect	parental refusal to recognize and take action to ameliorate a child's emotional disturbance

B. WHO MUST REPORT

Section 4 of the Abused and Neglected Child Reporting Act provides that the following professionals are mandated to report suspected cases of child abuse and neglect:

> [a]ny physician, hospital, surgeon, dentist, osteopath, chiropractor, podiatrist, Christian Science practitioner, coroner, school teacher, school administrator, truant officer, social worker, social services administrator, registered nurse, licensed practical nurse, director or staff assistant of a nursery school or a child day care center, law enforcement officer, or field personnel of the Illinois Department of Public Aid . . . .

C. WHEN TO REPORT

Any mandated reporter who has direct contact with a child he/she reasonably believes to be abused or neglected must immediately report the case or cause a report to be made to the Department of Children and Family Services (DCFS). Similarly, any other person who has a reasonable suspicion that a child is being abused or neglected may report the case to DCFS. The term "reasonable cause" is extremely difficult to define; it is more than a hunch but less than a certainty. Reasonable cause, or suspicion, must be based on observable physical or behavioral indicators, not on mere intuition or subjective feelings.

D. HOW A REPORT IS MADE

Section 7 of the Abused and Neglected Child Reporting Act requires that cases of suspected abuse and neglect be reported immediately by telephone, or in person, to the nearest office of the Department of Children and Family Services and then by a written report to DCFS within 24 hours. The report may also, but not instead, be made to the local law enforcement agency, but DCFS must be so notified. The report must include: the name and address of the child, the parents (the word "parents" is used throughout this handbook to refer to parent(s), guardian(s), custodian(s) or any other caretaker(s) unless otherwise indicated), the child's age, the nature of the child's condition, including any evidence of previous injuries, and any other information relevant to the issue of abuse and neglect.

E. FOLLOW-UP BY THE ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Section 2 of the Abused and Neglected Child Reporting Act provides the Department of Children and Family Services with statewide responsibility for receiving suspected child abuse and neglect reports and for providing appropriate services. DCFS must initiate an investigation within 24 hours after receipt of the report (Section 7 of the Abused and Neglected Child Reporting Act) and decide whether follow-up services are needed. In its handling of child abuse and neglect cases DCFS should:

1. Take measures to assure the child's safety while completing an investigation of the report.

2. Evaluate findings of the investigation and make an assessment of risk to the child.

3. Enlist the aid of community agencies and/or offer the child welfare services of DCFS to aid the parents in providing adequate care (homemaker services, day care, visiting nurses, etc.).

4. File petitions in juvenile court, when indicated, to obtain custody or court supervision.

5. Provide foster care or other substitute care for a child who is removed from the home.

6. Continue involvement in the situation until the child is receiving proper care in his/her own home or elsewhere.

F. PHYSICIAN'S POWER TO TAKE CUSTODY

Section 5 of the Abused and Neglected Child Reporting Act allows a physician to take temporary custody of a child without the consent of the child's parents based on a reasonable belief that the child has been abused or neglected and that the continuing care of the child by the parents presents an imminent danger to the child's life or health. The physician invoking this power must immediately notify the parents and DCFS. DCFS must bring the case before a judicial officer within the next 48 hours to obtain continued temporary custody of the child. Ill.Rev.Stat.1975, ch. 37, § 703-5(1); Amended by P.A. 80-536, eff. Oct. 1, 1977. (See Part IV, Section C for a discussion of temporary custody.)

The physician's authority to take temporary custody against the will of the parents may be exercised only within a hospital or other medical facility. In such instances, the hospital may provide ordinary care for the child but any extraordinary medical attention (e.g., surgery) requires the permission of the parents or a court order.

G. PRIVILEGE AND CONFIDENTIALITY

Section 10 of the Abused and Neglected Child Reporting Act requires anyone who makes a suspected abuse or neglect report or investigates such a report to testify to the full extent of his/her knowledge in court.

Section 10 specifically provides that

> . . .[n]o evidence shall be excluded by reason of any common law or statutory privilege relating to communications between the alleged perpetrator of abuse or neglect, or the child subject of the report under this Act and the person making or investigating the report.

This section makes it clear that mandated reporters are required to report suspected child abuse and neglect, that they are required to testify fully in court, and that they can not avoid these obligations by invoking a privilege or a duty of confidentiality.

Problems with privilege and confidentiality may arise in situations in which a parent's therapist (i.e., psychiatrist, psychologist, social worker) is subpoenaed to testify.

In practice, the problems occur most frequently when the therapeutic relationship has been established prior to the filing of a suspected child abuse or neglect report by someone other than the therapist. As a general rule of thumb, if the therapist filed the suspected abuse or neglect report or if the therapeutic relationship was established as a consequence of the filing of the report, the parent's assertion of privilege or confidentiality will not bar the therapist from testifying.

However, the law in Illinois is not entirely clear as to when a parent's assertion of privilege or confidentiality will be denied or allowed. One factor contributing to the lack of clarity is that privilege and duty of confidentiality for professionals acting as therapists (i.e., psychiatrists, psychologists, social workers) are regulated by laws found in separate and unrelated Acts. The Social Workers Registration Act, the Psychologist Registration Act, the Abused and Neglected Child Reporting Act, and the section on Competency of Witnesses in the chapter on Evidence and Depositions may all have a bearing on a parent's claim of a privilege or a duty of confidentiality arising out of a therapeutic relationship. Ill.Rev.Stat.1975, ch. 23, § *5301 et seq.*; ch. 91½, § 401 *et seq.*; ch. 23, § 2051 *et seq.*; ch. 23, § 2051 *et seq.*; ch. 51, § 1 *et seq.*

Psychiatrist-Patient Privilege

The Abused and Neglected Child Reporting Act does not include psychiatrists in the list of mandated reporters. However, a psychiatrist, as a physician, is mandated to report suspected child abuse and neglect. In a resulting juvenile court proceeding, the psychiatrist-patient privilege (ch. 51, § 5.2) is abrogated by Section 10 of the Abused and Neglected Child Reporting Act. Since dependency is not governed by this Act, the privilege exception carved out by the Act does not apply; therefore, the psychiatrist-patient privilege may be asserted and sustained in dependency actions. *In re Westland*, 48 Ill.App.3d 172, 362 N.E.2d 1153 (1977). (See Part III, Section C for a discussion of dependency.)

Counsel should note that there is no psychiatrist-patient privilege when the court orders psychiatric evaluation. Ch. 51, § 5.2(b); *In re Westland*, *supra*. It should be further noted that a patient who consents to a release of information to third parties waives the privilege. *Gottemoller v. Gottemoller*, 37 Ill.App.3d 689, 346 N.E.2d 393 (1976); *People ex rel. Jones v. Jones*, 39 Ill.App.3d 821, 350 N.E.2d 826 (1976).

Psychologist-Client Duty of Confidentiality

The Psychologist Registration Act prohibits psychologists from disclosing any information acquired in a professional capacity. Ch. 91½, § 406. Interestingly enough, the Abused and Neglected Child Reporting Act fails to include psychologists in the list of mandated reporters; accordingly, psychologists are not legally required to report suspected child abuse and neglect. However, evolving case law in other states, allowing civil recovery against professionals who fail to protect or warn potential victims, suggests that psychologists can not escape a duty to report. (See *Tarasoff v. Regents of the University of California*, 17 Cal.3d 425, 551 P.2d 334 (1976).) When a psychologist does initiate a report, psychologist-client confidential information is treated in the same manner as psychiatrist-patient confidential communications, discussed above.

Social Worker Duty of Confidentiality

As a mandated reporter, a social worker must report suspected child abuse and neglect and testify fully in resulting juvenile court proceedings. Furthermore, a social worker who investigates a report must also testify in subsequent court proceedings. At the same time, the Social Worker's Registration Act imposes a duty of confidentiality on social workers registered under this law. Ch. 23, § 5320. Section 10 of the Abused and Neglected Child Reporting Act, however, states that the mandate to report or investigate a report, and to testify fully at juvenile proceedings, supersedes the duty of confidentiality. *In re Pitts*, 44 Ill.App.3d 46, 357 N.E.2d 872 (1976). (See *In re Westland, supra.)* In *Pitts*, the social worker from the Department of Children and Family Services who investigated a suspected abuse report also developed a therapeutic relationship with the parents. Despite the parents' assertion that the therapeutic relationship was premised on the expectation of confidentiality, the Appellate Court held, in part, that the social worker's duty of confidentiality did not preclude the social worker from testifying during the juvenile court proceedings concerning the alleged abuse.

Even if the legal issues were completely resolved, several ethical problems facing the therapist would remain. For example, does a therapist have a moral duty to clients that anything said involving child abuse or neglect could be used against them in a juvenile court proceeding? Can a social worker truly be effective if functioning simultaneously as an investigator and a therapist? Can a social worker wholeheartedly work with a parent to develop better parenting skills while, at the same time, documenting the progress or lack of progress to support possible coercive court intervention?

H. IMMUNITY FROM LIABILITY

Section 9 of the Abused and Neglected Child Reporting Act provides that "[a]ny person . . . participating in good faith in the making of a report, or in the investigation of such report . . . " will have immunity from any civil or criminal liability, and good faith will be presumed. This means that a person will not be liable for any action taken in relation to making or investigating a report unless that person acted in bad faith by knowingly making a false report of suspected child abuse or neglect. On the other hand, failure to report a case of suspected child abuse or neglect could subject a mandated reporter to a lawsuit. For example, if a hospital failed to report an appropriate case and the child was subsequently abused, the hospital and responsible staff could be held civilly liable.

In 1972, a California case was settled for $600,000 by the malpractice insurers of a hospital and physician sued on behalf of a three year old child who had suffered extensive brain damage because of a series of unreported, but treated injuries inflicted by his caretakers. *Robinson v. Wical, M.D. et al.* (Civil No. 37607 California Superior Court, San Luis Obispo, filed September 4, 1970.) In another California case, a physician and hospital were sued for failing to properly diagnose the "battered child syndrome" and to report that diagnosis to the proper authorities. *Landeros v. Flood*, 17 Cal.3d 399, 551 P.2d 389, 131 Cal.Rptr. 69 (1976). In *Landeros*, a physician, upon examination of the 11 month old plaintiff, discovered spiral fractures of the right tibia and fibula and bruises over the entire back. In spite of the fact that the mother gave no explanation for her child's injuries, skeletal x-rays (which allegedly would have revealed a healing linear fracture of the child's skull) were never taken and the child was sent home without a report being made to the appropriate child welfare agency. Two months later, the child was brought to another hospital where a doctor observed injuries to her eye and back, puncture wounds on her legs, severe bites on her face, and second and third degree burns on her hand. The "battered child syndrome" was immediately diagnosed and reported to the appropriate agency. The California Supreme Court subsequently found that a cause of action exists when a physician fails to diagnose and report the "battered child syndrome".

Presently, in Illinois, there is no case law dealing with the civil liability of a mandated reporter for failure to report an appropriate case of suspected child abuse or neglect. Note, however, there is nothing in Illinois law barring such a suit.

16

II. IDENTIFICATION OF SUSPECTED ABUSED AND NEGLECTED CHILDREN

This material is presented to provide an overview of the major medical and non-medical indicators of child abuse and neglect. It should be emphasized that this information relates to observations which raise *suspicion* about the possibility of abuse or neglect. None of these indicators provide conclusive evidence, but rather, must be understood in the context of all of the information which a reporter may have available concerning the child and family. In addition, this material may be useful to attorneys as a checklist during pre-trial preparation, particularly when questioning an unresponsive physician or social worker, to ascertain whether all factors, both medical and non-medical, have been noted.

A. MEDICAL INDICATORS OF SUSPECTED ABUSE AND NEGLECT

1. Any injury to a child (especially under 5 years of age); special attention should be paid to head injuries, burns, bruises and fractures

2. Any injury where there is a discrepancy between the history and the degree, age, or type of injury

3. Any injury not mentioned in the history or for which there is no explanation

4. Head injuries:

   skull fractures
   subdural hematoma
   cerebral contusion
   retinal hemorrhages
   other ocular injuries
   perioral injuries
   subarachnoid hemorrhages

5. Burns:

   scald burns
   immerson burns — especially lower extremities and perineum dry contact burns
   cigarette burns — circular, punched out appearance

6. Fractures:

   single or multiple fractures — especially in children under 3 years of age
   multiple fractures in different stages of healing
   characteristic radiological findings of metaphyseal infraction and fragmentation or subperiosteal calcification, (initial x-rays show soft tissue swelling; repeat x-rays 10 - 14 days later may show subperiosteal calcification)
   fractures may involve any bone but especially long bones of extremities and ribs

7. Intra-abdominal injuries:

   perforated viscus — especially duodenum and jejunum

duodenal hematoma
pancreatic trauma

8. Skin injuries:

bruises — especially multiple bruises of different ages or locations
characteristic lesions:
cigarette burns
bite marks
loop marks — e.g., extention cord marks
linear marks — e.g., belt marks
thumb and finger print marks
choke marks on neck
circumferential tie marks on extremities
other characteristic marks resembling an instrument

9. Sexual abuse:

evidence of genital or rectal trauma
loose anal sphincter muscles
documentation of intercourse
venereal disease
allegation by child even if no physical findings

10. Other medical findings:

malnutrition or dehydration without obvious organic cause
advanced unattended disease
delayed development without obvious organic cause
ingestion of inappropriate food, drink or drugs
dead on arrival (D.O.A.)

(See Appendix B for a glossary of medical terminology.)

B. NON-MEDICAL INDICATORS OF SUSPECTED ABUSE AND NEGLECT

There are a number of social, psychological and familial indicators which should be considered when evaluating a case of suspected abuse or neglect for trial. As was mentioned above, none of these factors provide conclusive evidence, but should be considered when preparing the case as possible supportive evidence. These indicators can be differentiated as factors relating to the parents and factors relating to the child.

Factors Relating to the Parents

1. Explanation — when the parents' explanation concerning the injury is either unlikely, confused or contradictory; when there is an admission by the parents that they abused or neglected the child

2.	Attitude	when there is evidence of inappropriate expectations towards the child (role reversal), or perception of the child as being a "special" problem or different from other children (scapegoating)
3.	Affect	when the parents demonstrate a lack of concern, detachment or over-reaction to the child's injuries or to the situation
4.	History	when the parents' history indicates social isolation, gross immaturity, evidence of lack of control in other areas of their life or evidence of the parents having been abused as children
5.	Response	when there is a delay in seeking medical help, lack of cooperation concerning the treatment of the child or lack of visitation if a child is hospitalized
6.	Behavior	when there is evidence of bizarre behavior (psychosis), severe retardation, chronic alchololism or drug abuse on the part of the parents

Factors Relating to the Child

1.	Behavior	when the child is unusually hyperactive, aggressive, withdrawn or sexually acting out
2.	Affect	when the child appears unusually detached, fearful or lacks discrimination in relating to people
3.	Appearance	when the child shows evidence of poor hygiene or improper care
4.	Development	when the child exhibits major developmental lags
5.	Statements	when the child makes statements indicating that the parents have been abusive toward him/her

III. NEGLECT, ABUSE, DEPENDENCY: STATUTORY FRAMEWORK AND CASE LAW

Abuse, neglect and dependency must be seen on a continuum. At one end of the continuum are the children who are battered, starved and even killed by their parents. At the other end of the continuum are the children who are loved and nurtured in such a way as to optimize their physical, emotional and intellectual development.

At some point on this continuum are the children who receive minimally adequate care or who are subject to minor corporal punishment. There are many troubling questions. What constitutes adequate care? Even more difficult — what constitutes minimally adequate care? Where do you draw the line between physical punishment and abuse? The Illinois statutes do not and, realistically, cannot answer these questions. Most importantly, the statutes do not authorize coercive state intervention on behalf of all children receiving less than optimal care. The controlling statutes, the Abused and Neglected Child Reporting Act and the Juvenile Court Act, provide a statutory framework which attempts to define that point on the continuum which mandates state intervention.

The Abused and Neglected Child Reporting Act defines abuse as

> . . . any physical injury, sexual abuse or mental injury inflicted on a child other than by accidental means by a person responsible for the child's health or welfare.

and neglect as

> . . . a failure to provide, by those responsible for the care and maintenance of the child, the proper and necessary support, education as required by law, or medical or other remedial care recognized under State law, other care necessary for the child's well-being; or abandonment by his parent, guardian or custodian; or subjecting a child to an environment injurious to the child's welfare. Ill.Rev.Stat.1975, ch. 23, § 2053.

Abused and neglected children also fall within the definition of "Neglected Minors" as found in the Juvenile Court Act. The relevant section reads in part:

> (1) Those who are neglected include any minor under 18 years of age
>
> (a) who is neglected as to proper or necessary support, education as required by law, or as to medical or other remedial care recognized under State law or other care necessary for his well-being, or who is abandoned by his parents, guardian or custodian; or
>
> (b) whose environment is injurious to his welfare or whose behavior is injurious to his own welfare or that of others.
>
> (2) This Section does not apply to a minor who would be included herein solely for the purpose of qualifying for financial assistance for himself, his parents, guardian or custodian. Ch. 37, § 702-4.

Note the difference in the definitions of abuse and neglect in the two Acts. The definitional variations are due to the distinct but related purposes of the two statutes. The Abused and Neglected Child Reporting Act defines abuse and neglect in terms of what is reportable to the Department of Children and Family Services; this Act focuses on parents who have not provided proper and necessary care. The Juvenile Court Act defines abuse and neglect in terms of what is actionable in juvenile court; it focuses primarily on the condition of the child. As a point of reference, it should be noted that a relatively small percentage of the cases reported to DCFS results in juvenile court involvement.

A. NEGLECT

Abusive behavior involves acts of commission while neglectful behavior encompasses acts of omission. Although, conceptually, abusive behavior on the part of the parents is clearly distinct from neglectful behavior, the Juvenile Court Act blurs the distinction by including abuse as a subcategory of "neglect". (See Part IV, Section B.) For purposes of clarity in Part III, abuse and neglect will be discussed separately.

Sufficiency of the Evidence

Neglect is a term incapable of definition without reference to specific facts. As stated by the Illinois Supreme Court, neglect is

> . . . the failure to exercise the care that the circumstances justly demand. It embraces wilful as well as unintentional disregard of duty. It is not a term of fixed and measured meaning. It takes its content always from specific circumstances, and its meaning varies as the context of surrounding circumstances changes. *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624, 104 N.E.2D 769, 773 (1952).

In spite of the fact that *Labrenz* is considered a landmark case on neglect, it provides little in the way of practical guidelines for determining what facts are legally sufficient to prove neglect. An analysis of the facts of each case must take into account both the degree of parental neglect and the extent of harm to the child. For example, it is clear that a one year old child left alone on a regular basis for extended periods of time is neglected. Is the situation any different when the child is eight years old? Fourteen years old? Would the answer change if the lack of supervision resulted in an injury to the child?

Juvenile court judges must continually grapple with questions like these with little guidance from the appellate courts. The following cases illustrate some factual situations which the Illinois appellate courts deemed legally sufficient or insufficient for a finding of neglect:

Sufficient — Where two children (aged one year and three months) were left with neighbors for indefinite periods of time, milk was not provided, the children were infected with diaper rash, the house was dirty and without heat, running water, electricity, or proper sanitation, and the parents fought in such a way as to physically endanger the children, the court found sufficient evidence to uphold a finding of neglect. *In re Garmon*, 4 Ill.App.3d 391, 280 N.E.2d 19 (1972).

Insufficient — Where evidence showed the home, children and children's clothing were dirty on three occasions within 11 days, and the children attended day care irregularly, dirty and improperly clothed, the court found that the trial court's finding of neglect was contrary to the manifest weight of the evidence. *In re Stacey*, 16 Ill.App.3d 179, 305 N.E.2d 634 (1973).

Sufficient — Where a four year old, left in the care of her great-grandmother, was found wandering out of doors by police at 11:00 p.m., and the child's mother allegedly used drugs and engaged in prostitution, the Illinois Supreme Court affirmed the trial court's finding of neglect. *In re Stilley*, 66 Ill.2d 515, 363 N.E.2d 820 (1977).

Insufficient — Where an eight year old diabetic had been treated for diabetes acidosis twice within a relatively short period of time, the court reversed the trial court's finding of neglect as no evidence was introduced linking the child's serious medical condition to the care provided by the custodian. *In re Gonzales*, 25 Ill.App.3d 136, 323 N.E.2d 42 (1974).

Insufficient — Where evidence showed that an unmarried man roomed in the family home and paid rent, utilities, and bought a portion of the food, the youngest child was not fathered by the mother's husband, the 13 year old daughter had moved from home after unspecified differences of opinion with the unmarried roomer, and the 16 year old daughter was engaged to marry a 29 year old man, the court overturned a finding of neglect where evidence also showed that the family home was well maintained and children were healthy and happy. *In re Wallingford*, 129 Ill.App.2d 227, 262 N.E.2d 607 (1970).

Problems with Emergency Medical Care

Parental motivation distinguishes the two types of medical neglect. The first type of medical neglect concerns children who are denied medical attention and/or treatment due to their parents' apathy. The second type of medical neglect involves the parents' deliberate denial of medical care for their child based on their religious beliefs.

While the psycho-dynamics of the two situations are clearly distinct, the law treats both situations alike at the adjudicatory stage. If the child's life or health is seriously endangered, the child is "neglected" under the law. Ill.Rev. Stat.1975, ch. 37, § 702-4(a). However, the parental motivation causing the medical neglect is a critical factor in the court's ultimate dispositional order. When, out of apathy, parents fail to obtain necessary medical care for their child, the case is treated like other neglect cases and the full range of dispositional alternatives, including guardianship, is considered by the court. In contrast, when parents refuse to consent to medical treatment for their child on religious grounds, a procedure exists that allows the court to take custody of a child for the limited purpose of consenting to the medical treatment. An emergency hearing will be held to assess the necessity for treatment, the possible consequences and risks to the child, both with and without the medical attention.

In *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 104 N.E.2d 769 (1952), the parents of an eight day old infant refused to consent to a blood transfusion for their child due to religious constraints imposed by their church. Medical evidence indicated that the child would either die or be mentally impaired for life without a transfusion. The Illinois Supreme

Court found that the parents' constitutional right to religious freedom was not violated by appointment of a guardian to consent to the child's blood transfusion. *Labrenz* relied on the guidelines set forth by the United States Supreme Court in *Prince v. Massachusettes*, 321 U.S. 158 at 166-170, 88 L.Ed. 645 at 653-654, 64 S.Ct. 438 at 442-444, *rehearing denied*, 321 U.S. 804, 88 L.Ed. 1090, 64 S.Ct. 784 (1944):

> The right to practice religion freely does not include liberty to expose the community or child to communicable disease or the latter to ill health or death.... Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves

When parents are not available to consent to emergency medical care, as opposed to when they are available but unwilling, a physician can render any necessary emergency treatment without first obtaining a court order. Ch. 91, § 18.3. Note the additional circumstances in which neither parental consent nor a court order is required to administer health care:

> —Where minors who are married or pregnant consent to their own medical care and surgery. Ch. 91, § 18.1
>
> — Where minors, twelve years of age or older, consent to their treatment for venereal disease. Ch. 91, § 18.4.
>
> —Where minors who are parents, married or pregnant consent to birth control services and information. Note, such services may also be provided to other minors who are referred by a physician, clergyman or a planned parenthood agency or where the failure to provide services would create a serious health hazard. Ch. 91, § 18.7.
>
> —Where minor parents consent to the medical care, surgery or dental care for their children. Ch. 91 § 18.2.

Problems with Anticipatory Neglect

The issue of anticipatory neglect arises in two situations: first, when it is predicted that a child will be neglected (or abused) by parents who have not yet had custody of their child; and second, when it is predicted that a child will be neglected (or abused) by parents who have neglected (or abused) the child's sibling.

It is clear that the court can not make a finding of neglect when the parents have never had custody of the child and no evidence of actual abuse or neglect has been offered. *In re Nyce*, 131 Ill.App.2d 481, 268 N.E.2d 233 (1971). In *Nyce*, the mother of the child was a seventeen year old minor and a ward of the court. The mother arranged for the child to remain in the hospital after delivery while she returned home to recuperate. The neglect petition was filed before the mother was given an opportunity to assume responsibility for the child's care. The Illinois Appellate Court held that

> [t]he scope of authority of the Circuit Court to deal with minors under section 702-4 is limited to minors who are actually neglected and does not extend to those who are thought to be subject to neglect in the future. *In re Nyce, supra*, 131 Ill.App.2d at 487, 268 N.E.2d at 237.

Note, however, that the situation may be different in a dependency proceeding. (See Part III, Section C.) Presuming the necessary proof for dependency (ch. 37, § 702-5), it is not necessary to also prove actual harm to the child. In the case of *In re East*, 32 Ohio Misc. 65, 288 N.E.2d 343 (1972), the court found that

> . . . in a dependency action, where the child's condition or environment warrant it, the child may be removed from the custody of the mother and it is not necessary that she first be given the opportunity to prove that she can properly care for said child. 32 Ohio Misc. at_____, 288 N.E.2d at 346-347.

At present, there are no Illinois appellate decisions dealing with the authority of the juvenile court to find a child neglected based solely on evidence of abuse or neglect of a sibling. This issue is currently on appeal. *In re Brooks*, No. 76-1342, First Judicial District, Ill.App.Ct. appeal filed June 24, 1976. In practice, the juvenile court does intervene when there is evidence that a child has been abused or neglected and a sibling remains in similar circumstances where the abuse or neglect is likely to reoccur. (See *Illinois Juvenile Practice* (Ill.Inst. for CLE, 1977) § 8.13.) Case law relating to termination of parental rights and case law from other jurisdictions support this practice.

In the case *In re Robertson*, 45 Ill.App.3d 148, 359 N.E.2d 491 (1977), the court reviewed the admissability of certain evidence in a termination of parental rights proceeding. The appellate court upheld the admission of evidence showing the unexplained death due to a traumatic head injury of the child's one month old sibling. In another termination case, the court held that depravity as to one child may be used to prove depravity as to another child. *In re Flynn*, 22 Ill.App.3d 994, 318 N.E.2d 105 (1974).

Courts in other jurisdictions have used powerful language to indicate that abuse of one child may be evidence of a *prima facie* case of immediate danger to a sibling in the same circumstances. In the case of *In re Baby Boy Santos*, 71 Misc.2d 789 at 791, 336 N.Y.S.2d 817 at 819 (1972), the court stated that

> [i]t has been the experience of the court, as well as authorities in the subject of child abuse, that there is in effect a "child abuse syndrome" and that when one abused child is removed from the home, that another child in the home may become the object of abuse by the parent.

Even more dramatically, the court stated in the case *In re Maria Anthony*, 81 Misc.2d 342 at 345, 366 N.Y.S.2d 333 at 336 (1975), that

> [t]his Court cannot entertain the callous or even casuistic hypothesis that it must await broken bones or shattered psyche before extending its protective cloak around this child . . . .

See also *In re A.A.*, 533 S.W.2d 681 (Mo.Ct.App., Feb., 1976).

B. ABUSE

An abused child, according to the Juvenile Court Act, is one whose environment is injurious to his/her welfare. Ill.Rev.Stat.1975, ch. 37, § 702-4(b). Abuse, as defined in the Abused and Neglected Child Reporting Act, means any physical injury, mental injury or sexual abuse inflicted in a nonaccidental manner on a child by a person responsible for the child's health or welfare. Ch. 23, § 2053.

It is important to note that a parent need not actually perpetrate the abuse for a child to be found "neglected" under the Juvenile Court Act (ch. 37, § 702-4), if the parent is aware of the abuse, or the potential for abuse, and fails to protect the child. This situation arises in two recurring fact patterns. The first fact pattern involves injury to a child caused by a third party, for example, a babysitter or a relative. If the parents knew or should have known that the third party was irresponsible or dangerous, the court may find the child "neglected" by reason of the parents' failure to protect their child. The second fact pattern involves injury to a child inflicted by one parent (the active abuser) while the other parent (the passive abuser), who is aware of the abuse, fails to intervene. In this situation, the court may enter a finding of "neglect" against both parents even though only one parent actively abused the child. *In re Holmes*, 28 Ill.App.3d 104, 328 N.E.2d 35 (1975).

Physical Abuse

The term "battered child syndrome" was coined in 1962 to identify nonaccidental physical abuse suffered by a child resulting from an intentional, though not necessarily premeditated, act of a parent. (See Kempe et al., *The Battered Child Syndrome*, 181 Journal of the American Medical Association 17 (1962)). The medical profession has recognized the "battered child syndrome" as a valid medical diagnosis and courts have recognized it as "a legally qualified diagnosis". *People v. Jackson*, 18 Cal.App.3d 504 at 507-508, 95 Cal.Rptr. 919 at 921 (1971); *Landeros v. Flood*, 17 Cal.3d 399 at 409, 131 Cal.Rptr. 69 at 73 (1976).

Since eyewitnesses willing and able to testify are rare occurrences in child abuse cases, proof is most often based on circumstantial evidence showing that the type, age or degree of injury to the child is inconsistent with the parents' explanation of the injury.

Mental Injury

Mental injury, which encompasses both psychological abuse and emotional neglect, has no universally accepted definition. Consequently, mental injury is exceedingly difficult to document and prove. Judicial resistance to recognizing mental injury as actionable under the Juvenile Court Act is due, in part, to this problem of definition. Further, the court is reluctant to interfere with family autonomy when the whole area of mental health is riddled with unknowns. Because experts in the field of mental health are unable to identify with any certainty the precise causes of emotional disturbances, the juvenile court is unwilling to infer parental responsibility based only on evidence of a child's emotional disturbance, no matter how severe. Therefore, a direct cause and effect relationship must be shown between specific parental behavior and the child's emotional or psychological distress to obtain a finding of "neglect" based on mental injury. In contrast, causation in physical abuse cases is most frequently proven circumstantially.

Because of the difficulty in proving direct parental causation of mental injury, obtaining a finding of "neglect" which is predicated solely on a mental injury theory is highly unlikely. However, the inclusion of any additional facts alleging physical abuse or neglect will help secure the desired legal end — a finding of "neglect".

Sexual Abuse

Sexual abuse of a child includes behavior ranging from vaginal, anal or oral intercourse to fondling and exposure. Most often, the abuser is a parent, a stepparent or a member of the child's household. However, as with physical abuse, sexual abuse perpetrated by a non-household member may be appropriate for juvenile court involvement if the parents knew or should have known that the abuse was occurring and failed to intervene. Unlike physical abuse, sexual abuse seldom results in obvious signs of physical trauma to the child. Most often, sexual abuse is not suspected until the child indicates, either verbally or through extreme behavior, that some form of sexual contact has occurred. Occasionally, corroboration can be obtained through medical findings, including venereal disease, presence of sperm, broken or stretched hymen, loose anal sphincter muscles or trauma to external genital area.

Since there is rarely any physical evidence of sexual abuse, and, even more rarely, witnesses to the occurrence, the evidence offered at trial to prove the allegation of sexual abuse is most frequently the testimony of the child. Yet the natural reluctance of a child to testify against his/her parents, coupled with a child's equally strong reluctance to discuss sexual matters, compounds the difficulty of eliciting the child's testimony regarding the sexual abuse. Therefore, counsel should be sensitive to the child's emotional needs and should carefully prepare the child for the rigors of direct and cross examination.

C. DEPENDENCY

The Juvenile Court Act provides jurisdiction and authorizes state intervention on behalf of dependent children as well as abused and neglected children. A dependent minor is defined as:

> (1) . . . any minor under 18 years of age
>
> (a) who is without a parent, guardian or legal custodian
>
> (b) who is without proper care because of the physical or mental disability of his parent, guardian or custodian; or
>
> (c) who has a parent, guardian or legal custodian who with good cause, wishes to be relieved of all residual parental rights and responsibilities, guardianship or custody, and who desires the appointment of a guardian of the person with power to consent to the adoption of the minor under Section 5-9.
>
> (2) This Section does not apply to a minor who would be included herein solely for the purpose of qualifying for financial assistance for himself, his parents, guardian or custodian. Ill.Rev.Stat.1975, ch. 37, § 702-5.

A dependency petition is filed only when specific conditions exist; it is used when the child's parents are deceased or when the parents are physically or mentally unable to provide care for the child, i.e., the parents are institutionalized for medical or psychiatric reasons. In exceptional situations, a child may be deemed dependent based on a physical or mental

disability of the parents which does not result in institutionalization, e.g., mental illness, alcoholism, drug addiction, paralysis, etc. (See Part IV, Section B for the use of psychiatric evidence and Part I, Section G for a discussion of privilege and confidentiality.)

Note that neither financial status (ch. 37, § 702-5(2)) nor marital status (*Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)) may be used as a basis for a dependency petition. In *Stanley*, the United States Supreme Court overturned the lower court's finding that three children were dependent after their mother died, in spite of the fact that the putative father had lived with the family for eighteen years and wanted custody. The juvenile court refused to recognize his interest as an unmarried father. The Supreme Court found that a putative father may have the same interests and rights in relation to his children as a married father; it may be a violation of due process and equal protection to discriminate against a parent based on his marital status. In *Stanley*, the Supreme Court held that a putative father, like a married father, has a right to notice and a hearing before his children can be removed from his custody.

IV. COURT PROCEEDINGS

Juvenile court involvement with an abused, neglected or dependent child is initiated by the filing of a neglect or dependency petition. The first stage in the court process is usually a temporary custody hearing where the need for temporary protective custody of a child is determined. The second stage in the court process is the trial, or adjudicatory hearing, where the court determines whether a child is, in fact, neglected or dependent. At the dispositional hearing, the third stage, the court determines the child's best interests, including with whom and where the child must live. This process, from the time the petition is filed until the dispositional orders are entered, may take from six weeks to six months, if not longer, to complete. Further (supplemental) proceedings may be initiated as long as the court continues its jurisdiction; the court can continue jurisdiction until a child reaches the age of twenty-one.

Each stage of the juvenile court process involves different issues which determine the relevancy, and therefore admissibility, of evidence. The following outline provides a guide to the issues relevant at the various stages of the court process:

Temporary Custody Hearing

Is there probable cause to determine that the child is neglected/dependent?

Is there an immediate and urgent necessity for the court to order protective custody of the child and to appoint a temporary custodian?

Adjudicatory Hearing (Trial)

Is the child, in fact, neglected/dependent?

Is there evidence to support a specific finding of physical abuse?

Is it in the best interests of the child and the public that the child be adjudged a ward of the court?

Dispositional Hearing

Are the parents unfit, unable or unwilling to care for, protect, train, or discipline the child?

Is it in the child's best interests to have a legal custodian or guardian appointed?

Where there has been a specific finding of physical abuse at the trial stage, is there evidence to support a specific finding that the parents are now fit? (See Part IV, Section E.)

Counsel should note the following procedural aspects of the juvenile court process. The rules of evidence for civil proceedings apply and the standard of proof is the preponderance of the evidence, Ill.Rev.Stat.1975, ch. 37, § 704-6; *In re Urbasek*, 38 Ill.2d 535, 232 N.E.2d 716 (1967). The juvenile court has jurisdiction over any child who is physically present in the state; the legal residence of the parents or child is immaterial to the court's jurisdiction. *In re Gonzales*, 25 Ill.App.3d 136, 323 N.E.2d 42 (1974).

In every proceeding under the Juvenile Court Act, the People of the State of Illinois, the child and the parents (or legal custodian, guardian or responsible relative) are parties. Ch. 37, § 701-20. The People of the State of Illinois are represented by the State's Attorney (§ 701-21), the child is represented by an attorney appointed by the court, the Guardian ad Litem (§ 704-5), and the parents are represented by counsel either privately retained or court appointed (e.g., the Public Defender) in cases of indigency (§ 701-20(1)). All parties are entitled to discovery, to present evidence and to cross examine witnesses. § 701-20(1). Temporary custodians of the child, foster parents and representatives of any agency interested in the child (e.g., DCFS) are also entitled to be heard by the court. § 701-20(2).

A. SERVICE OF PROCESS

In order for the court to have proper jurisdiction over the parties, a personally served summons, or summons served by certified mail or publication must be directed to the minor and to every other person named as Respondent (e.g., parents) in the petition. The summons must contain a statement informing all parties that each is entitled to have an attorney present at the hearing; it must be issued under the seal of the court, attested to and signed by the clerk of the court, and must be served at least 3 days prior to the time set for the hearing. Ill.Rev.Stat.1975, ch. 37, § 704-3. If personal service cannot be made on any Respondent within a reasonable time, or if any Respondent resides outside the state, service may be made by certified mail. The adjudicatory hearing may not be held until five days after such mailing. Lacking information to achieve personal service or service by mail, the clerk of the court will publish notice. § 704-4. It should be noted that putative fathers have the right to receive notice of any hearings regarding their children. *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972).

B. PETITION FOR ADJUDICATION OF WARDSHIP

The filing of a neglect/dependency petition in accordance with the Juvenile Court Act brings a case of suspected child abuse or neglect before the juvenile court. Any adult person, any agency or association, or the court on its own motion may file the petition. Ill.Rev.Stat.1975, ch. 37, § 704-1(1). In most cases, however, it is the Department of Children and Family Services that, having investigated a suspected child abuse or neglect report, files the petition.

Abused and neglected children fall within the definition of "Neglected Minors" as found in the Juvenile Court Act. The relevant section reads in part:

> (1) Those who are neglected include any minor under 18 years of age
>
> (a) who is neglected as to proper or necessary support, education as required by law, or as to medical or other remedial care recognized under State law or other care necessary for his well-being, or who is abandoned by his parents, guardian or custodian; or
>
> (b) whose environment is injurious to his welfare or whose behavior is injurious to his own welfare or that of others . . . § 702-4.

Those neglect petitions based on allegations of child abuse arise from subsection (b); it is the abused child who is found to be "neglected" by reason of an environment injurious to his/her welfare. This is referred to as an "environment injurious" allegation. Those neglect petitions based on allegations of child neglect arise from subsection (a); it is the neglected

child who is found to be "neglected" by reason of abandonment or lack of proper support, education, medical care or other care necessary for his well being. When a child has been neglected, as opposed to abused, the petition most frequently contains the allegation that ". . . the minor is neglected as to . . . other care necessary for his well-being"; this is referred to as a "care necessary" allegation.

The allegation that is most rarely found on neglect petitions is the allegation that the minor's behavior is injurious to his/her own welfare. § 702-4(1)(b). "Behavior injurious" may be alleged in a case involving an adolescent who is emotionally disturbed and acting out due to parental neglect.

Despite the fact that the language in the "Neglected Minor" statute (§ 702-4) is nonspecific, it has withstood constitutional challenge on the basis of vagueness. *People v. Schoos*, 15 Ill.App.3d 964, 305 N.E.2d 560 (1973), upheld the general language of the statute defining neglect, stating that the nature of child neglect precludes precise definition.

Another related petition, authorized by the Juvenile Court Act, is the dependency petition. A dependent minor is defined as:

> (1) . . . any minor under 18 years of age
>
> (a) who is without a parent, guardian or legal custodian;
>
> (b) who is without proper care because of the physical or mental disability of his parent, guardian or custodian; or
>
> (c) who has a parent, guardian or legal custodian who with good cause, wishes to be relieved of all residual parental rights and responsibilities, guardianship or custody, and who desires the appointment of a guardian of the person with power to consent to the adoption of the minor under Section 5-9. . . § 702-5.

Occasionally, an allegation of dependency is included as an additional count in a neglect petition. When this occurs, it means that the parents have a history of mental or emotional instability and the State would like to use evidence of that instability to help prove that the child is "neglected". A dependency count based on mental disability in the neglect petition opens the door for the use of psychiatric and psychological evidence at the trial. In cases where dependency is not alleged in the neglect petition, psychiatric and psychological evidence is rarely relevant at the trial; it is generally used at the disposition after there has been a finding of neglect. (See Part III, Section C for a further discussion of dependency and Part I, Section G for a discussion of privilege.)

C. TEMPORARY CUSTODY HEARING

An allegedly abused, dependent or even severely neglected child often needs the protection of the State prior to the time of trial. The temporary custody hearing is the means by which the State gains protective custody of a child pending the outcome of the trial.

The purpose of the temporary custody hearing is really twofold: to determine whether there is probable cause to believe that the child is neglected/dependent and, if answered affirmatively, to determine whether there is an immediate and urgent necessity that the child be removed from the custody of the parents pending the outcome of the trial. At the temporary custody hearing the rules of evidence are relaxed and first person hearsay is admissable. Usually, one person testifies at the temporary custody hearing; that person is most commonly the DCFS worker who has the most complete knowledge of both the facts supporting the allegations of neglect/dependency and the probability of danger if the child remains in the parents' custody during the initial stages of the proceedings.

If, at the conclusion of the temporary custody hearing, the court finds probable cause to believe the minor is neglected/dependent, the court will order that a social investigation be conducted either by a DCFS worker, a probation officer or other social worker (e.g., public aid worker), and will set a date for a report on the completed investigation. If, in addition, the court finds an immediate and urgent necessity for the child to be removed from the custody of the parents, the court will generally appoint DCFS temporary custodian of the child. The child is then placed either with a relative or in a licensed foster home.

Due to the emergency nature of the temporary custody hearing, it is not prejudicial error for the court to proceed when the parents are not represented by counsel. *People ex rel. Jones v. Jones*, 39 Ill.App.3d 821, 350 N.E.2d 826 (1976). If neither the parents nor counsel is present or had actual notice of the proceedings, an affidavit may be filed setting forth this fact, and a rehearing must be held within 24 hours of the filing of the affidavit. Ill.Rev.Stat.1975, ch. 37, § 703-6(3); *People ex rel. Jones, supra.*

At the present time, if the petition alleges immediate and urgent necessity, verbal notice to all parties is permitted, and the temporary custody hearing usually occurs one to two days following the filing of the petition. [If immediate and urgent necessity is not alleged, then service of summons is required and, consequently, the first hearing takes place two to three weeks following the filing of the petition. At this hearing, temporary custody is not an issue as the child's life or health is not endangered.] If the need arises, the law provides for expedited temporary custody hearings in two exceptional situations.

The first situation involves the authority of a law enforcement officer to take protective custody of a child. The Juvenile Court Act gives any law enforcement officer the authority to take into temporary custody, without a warrant or a prior hearing, a minor whom the officer believes, with reasonable cause, to be abused or neglected. § 703-1(1)(a). The second situation involves the authority of a physician in a medical facility to take custody of a child, without a prior hearing, based on a reasonable belief that the child has been abused or neglected and that there is imminent danger to the child's life or health in the custody of the parents. Ch. 23, § 2055. (See Part I, Section F.) When a child is taken into custody by one of the above mentioned methods, the matter must be brought before a court for a hearing within 48 hours, exclusive of Sundays and legal holidays. Ch. 37, § 703-5; Amended by P.A. 80-536, eff. Oct. 1, 1977.

One further means of obtaining physical custody of a child who is believed to be in danger is by means of a juvenile arrest warrant. The Juvenile Court Act provides that in situations where a neglect/dependency petition is already filed, and where the court finds that a child's life or health is endangered, the court can issue a warrant ordering that the child be taken into custody immediately. § 703-1(2). In practice, this occurs most often when the person investigating the suspected abuse or neglect is denied access to the child.

It should be noted that a juvenile arrest warrant does not result in a police record. § 703-1(3). In cases where dependency is alleged in the petition, the court, besides ordering a social investigation, may also order a referral of the parents and, if appropriate, the child to the Department of Clinical Services for psychiatric evaluation. (See Part IV, Section D for a discussion of Clinical Services.)

D. ADJUDICATORY HEARING

The adjudicatory hearing is the fact-finding phase of the court process. This phase is the one most adversary in nature; the rules of evidence, particularly the rules regarding hearsay, are strictly adhered to. As with all proceedings under the Juvenile Court Act, there is no right to a trial by jury. *People ex rel. Carey v. White*, 65 Ill.2d 193, 357 N.E.2d 512 (1976).

In neglect/dependency proceedings, the adjudicatory hearing must be set within 30 days and acted upon within 90 days from the date the petition was filed. Ill.Rev.Stat.1975, ch. 37, § 704-2. Unlike most civil proceedings where continuances are granted as a matter of course, continuances in neglect/dependency matters are more difficult to obtain, particularly for the State. Occasionally, the adjudicatory hearing is circumvented when, by agreement of the parties, the court continues the case for a period of supervision subject to specific conditions governing the parties. § 704-7. (See Part IV, Section F for a discussion of 4-7 Supervision.)

Witnesses

Witnesses may be called by any party to testify as to the alleged abuse, neglect or dependency, the nature of the home environment, the severity and likely cause of any nonaccidental injuries to the child, admissions against interest made by the parents, or any other evidence which bears on the ultimate question of whether the child is neglected/dependent. Witnesses who might testify at the adjudicatory hearing are those persons who have firsthand knowledge of the abuse, neglect or dependency, including involved physicians, nurses, psychologists, social workers, teachers, interested family members and neighbors. (See Part I, Section G for a discussion of privilege and confidentiality.)

In some circumstances the child who is the subject of the petition may be called to testify. However, the competency of the child witness must be considered. Children 14 years or older are presumed to be competent to testify. *People v. Jenkins*, 20 Ill.App.3d 727, 315 N.E.2d 269 (1974). Children under the age of 14 may be competent to testify if the court determines that they, first, have the capacity to understand the duty to tell the truth, and, second, have the capacity to perceive, recollect, and testify. *People v. Crowe*, 390 Ill. 294, 61 N.E.2d 348 (1945).

Although a child as young as five and a half years has been found to be competent to testify (*Wheeler v. United States*, 159 U.S. 523, 16 S.Ct. 93, 40 L.Ed. 244 (1895)), the decision to call a child as a witness should be considered very carefully because of the possible trauma to the child which may be caused by testifying against his/her parents. In the case of a young or extremely sensitive child, the guardian ad litem should ask the judge to hear the child's testimony in chambers to avoid unnecessary emotional stress. This approach is especially important when eliciting testimony from a child concerning alleged sexual abuse or other matters potentially embarrassing to the child.

Because neglect and dependency proceedings are civil in nature, parents may be called to testify as adverse witnesses under § 60 of the Civil Practice Act. Ch. 110, § 60. Parents may be called to testify in neglect/dependency proceedings under § 60 without violating their constitutional right against self-incrimination. *People v. Davis*, 11 Ill.App.3d 775, 298 N.E.2d 350 (1973). However, once a parent takes the stand as an adverse witness, the parent may refuse to answer a question if the answer would be incriminating in pending or future criminal prosecutions, unless immunity from prosecution has been granted. Furthermore, testimony under § 60 binds the party who calls the witness unless the witness is impeached or the testimony is rebutted. *Dimitrijevic v. Chicago Wesley Memorial Hospital*, 92 Ill.App.2d 251, 236 N.E.2d 309 (1968).

Presentation of Evidence

There are several basic rules of evidence which must be kept in mind by counsel in both the preparation and presentation of evidence. Other professionals working in the field of child abuse and neglect may find these rules helpful in understanding the court process.

Testimonial Evidence:

The most common type of evidence is testimony elicited from a witness by the questions of an attorney. Counsel must be mindful of the rules of evidence and procedure pertaining to the examination of witnesses. Leading questions are prohibited on direct examination except in the following circumstances: as preliminary or background questioning; when the witness is hostile, adverse, or immature; when the subject matter is delicate; and when the witness' memory has been exhausted. Additional rules governing the form of questions are as follows:

Ask questions; do not make assertions.
Frame questions in simple, definite, clear language rather than in ambiguous or misleading language.
Confine each question to a single item.
Do not be repetitious or argumentative.
Ask questions calling for statements of fact rather than conclusions, conjectures or opinions, except in those instances where opinions are admissible.

Exhibit Evidence:

In addition to testimonial evidence, counsel may wish to offer writings, photographs, x-rays, or objects into evidence. When this is the case, these procedures should be followed:

Counsel should have the object marked as an exhibit.
Counsel should lay the foundation for the introduction of the exhibit by having it appropriately identified or authenticated.
The proposed exhibit should be submitted to opposing counsel for inspection.
Counsel should move to have the exhibit accepted into evidence.
Once the exhibit is accepted into evidence, it should be read or shown to the witness by counsel.

Opinion Testimony:

In general, witnesses are called to testify to facts, not opinions. However, a witness can give an opinion if the witness is qualified and if the witness establishes a factual foundation

upon which a logical conclusion, or opinion, can be based. For example, with the proper foundation, non-expert witnesses can give opinions on such obvious matters as a person's appearance, condition and attitude. Expert witnesses can also give opinions on matters within their field of expertise. The most common expert witnesses called in abuse and neglect cases are doctors. In a physical abuse case, for example, a radiologist may be called to give an expert opinion on the age of an injury at the time the x-rays were taken. Before giving an opinion as to the age of the injury, the radiologist would first testify as to the basis or foundation for this conclusion.

Counsel should be aware that most professionals tend to translate the information they obtain into conclusions. Each witness must realize that summary conclusions (the children were neglected, the house was dirty) will be objected to by opposing counsel and ruled inadmissible by the court; what will be admissible are the supporting facts (no food in the house, frigid temperature, children without clothing, feces on the floor, etc.) leading to the conclusions. An important task of an attorney preparing a neglect/dependency case is to help the professional who must testify sort out and identify the facts upon which the professional's opinions and conclusions are based.

Hearsay Rule:

As a general rule, witnesses can testify only to facts of which they have firsthand knowledge. In other words, witnesses cannot testify if their testimony is based on hearsay. However, there are a number of exceptions to the hearsay rule. In neglect/dependency cases, the most frequently used exception to the hearsay rule is the exception for admissions made by parties. A witness can testify as to direct admissions by parents that they abused or neglected their child, or out of court statements by parents which imply that they abused or neglected their child.

Laying a Foundation:

Before any witness testifies to specific facts, a foundation must always be laid to show when the facts were observed, where the facts were observed and who was present at the time. For example, before a doctor testifies as to the condition of the child examined, the doctor must first relate the date, approximate time and place of the examination, and the identity of any persons present during the examination.

Relevancy:

Only relevant evidence is admissible. Thus, during the adjudicatory hearing, only evidence which logically tends to show that the child was abused, neglected or dependent is admissible. For example, evidence that a mother is living with an adult male to whom she is not married is not necessarily relevant in a neglect trial. Evidence that a mother is frequently out with her boyfriend, leaving her child unattended, is relevant in a neglect case.

Competency:

Witnesses must be competent to testify. Witnesses are competent if they first, have the capacity to understand the duty to tell the truth, and second, have the capacity to perceive, recollect, and testify. In Illinois, a witness 14 years of age or older is presumed to be competent to testify. *People v. Jenkins*, 20 Ill.App.3d 727, 315 N.E.2d 269 (1974). To qualify a witness under the age of 14 years, the judge will ask the child questions concerning his/her age, address, education, etc., to establish the child's capacity to testify, and questions

concerning religious or moral training to establish the child's understanding of the duty to tell the truth.

Use of Medical Testimony

Medical testimony is crucial to the trial of physical abuse, failure to thrive and medical neglect cases. One of the most important tasks of the attorney in trying an abuse or neglect case is the careful preparation of medical testimony. An ill-prepared doctor can result in a failure to prove the allegations of the petition. When a case is lost due to poor preparation, doctors believe that their time and efforts were wasted. Further, the once burned physician is less likely in the future to report cases of suspected child abuse and neglect. Thus, whenever possible, an attorney planning to call a physician as a witness should arrange a pre-trial conference with the physicians who will testify in order to properly prepare their responses.

Physicians, like other witnesses, testify at trial as to their firsthand knowledge of abuse or neglect. A physician need not be qualified as an expert in order to testify to the observed condition of the child at the time of examination or to any statements made by the parents which the physician heard concerning the cause of the child's injury or condition. However, in order to prove that the nature or extent of the child's injury or condition was such that it could not have been caused either accidentally or in the manner explained by the parents, it is necessary to obtain the physician's expert opinion. The physician must be qualified as an expert prior to giving an opinion.

In physical abuse cases, a treating physician is a key witness because it is often possible to prove through the physician's testimony that the nature or extent of the child's injuries were such that they could not have been caused accidentally. The physician must first testify as to the child's condition upon initial examination. Then, the physician must give an opinion as to whether the injuries were caused by trauma. Finally, the physician must establish the degree of certainty with which he/she can say that the injuries were likely to have occurred in accordance with the parents' "presenting story" (the initial account given by the parents regarding the manner in which the injuries were incurred). If the doctor can say that it is impossible, or even highly unlikely, for the child's injuries to have occurred in accordance with the parents' story, then the attorney has built a prima facie case of neglect. (See Appendix C for sample questions for a medical witness testifying in a physical abuse case.)

In failure to thrive cases, a physician is needed to testify as to the child's malnourished condition and delayed development at the time of admission to a hospital. (See Part I, Section A for the definition of failure to thrive.) The physician must then testify that the failure to thrive condition is not due to organic causes. This conclusion is based on the results of diagnostic tests as well as the child's rapid weight gain in the hospital when placed on a well-balanced diet.

In medical neglect cases, a physician must testify as to the physical condition of the child and the potential risk to the child if the condition is not given medical attention. (See Part I, Section A for the definition of medical neglect.) A finding of neglect based on medical neglect requires, first, evidence that the parents were informed of the child's condition, the seriousness of the condition, the need for medical follow-up, and the likelihood of danger to the child without the follow-up; and, second, evidence that the parents failed to act appropriately despite being so informed. (See *In re Gonzales*, 25 Ill.App.3d 136, 323 N.E.2d 42 (1974).)

In all cases involving medical testimony, the attorney must prevent the possibility that important evidence will not come out during direct examination because the doctor has not been properly prepared for the line of questioning, or because the doctor has unilaterally determined that some piece of evidence is inadmissible. For instance, many physicians erroneously view statements made by parents as inadmissible hearsay. Therefore, the physician should be told that any information, obtained from any source, bearing on whether or not the child has been abused or neglected, should be disclosed to the attorney, who will then decide on its potential admissibility.

Finally, the child's hospital records are an important tool in trial preparation for refreshing the doctor's memory and for alerting the attorney to the child's symptoms, injuries or condition (past and present), treatment and prognosis. An appropriately prepared medical witness is virtually impervious to cross-examination.

Use of Medical Records

Although most courts in the United States allow the admission of medical records into evidence under the business records exception to the hearsay rule, Illinois law specifically excepts medical records from the business records exception to the heresay rule. Ch. 110A, § 236(b). Therefore, medical records are rarely admissible as evidence in Illinois.

The major use of medical records is to help counsel identify potential witnesses while preparing the case and to refresh the memory of a witness on the stand. Medical records can be an invaluable tool in refreshing the memory of a treating physician as to the seriousness of the injuries or condition, the treatment administered and the dates of examination. Ideally, each witness' memory has been refreshed before taking the stand. However, if, while testifying, a witness' memory becomes exhausted, the witness, with the permission of the court, can use records or notes to refresh his/her memory.

Rarely, a situation arises in which the witness has no present recollection of the facts and thus, is unable to refresh his/her memory by referring to the medical records. It is possible that specific parts of the medical records may be admissible as evidence in neglect/dependency cases under the past recollection recorded exception to the hearsay rule, if an appropriate foundation is laid.

In the rare instance when a medical record is admitted into evidence, the court will allow a copy of the original medical record to be admitted, provided counsel proves that the copy was made by a person in proper custody of the original record. Counsel should note that it may be necessary to have the medical records custodian in court as a possible witness if a question is raised as to the chain of possession of the original record. If at all possible, prior to trial, counsel should obtain a stipulation as to the proper chain of custody to avoid an unnecessary court appearance by the records custodian.

Use of Social Work Testimony

Social work testimony at the trial stage of a neglect/dependency case is generally for two limited purposes: to relate the events which led to the filing of the neglect/dependency petition and to inform the court of any firsthand knowledge of abuse or neglect or dependency. Social workers from hospitals, schools, and social service agencies, as well as from DCFS, may be called to testify.

Generally, social workers are neither qualified as expert witnesses nor permitted to give opinion testimony at the trial stage of the proceedings. For the most part, social work

testimony at trial is restricted to factual observations; therefore, the difference between the facts observed and the opinions and conclusions drawn by the social worker from those facts warrants special attention.

Generally, social workers may not testify as to facts which were not personally observed. Social workers should note what information they obtained from third persons so that the persons with actual firsthand knowledge may be called to testify. The worker should relate to counsel all information which he or she may have pertaining to the neglect/dependency case including hearsay information. There are many exceptions to hearsay and the decision regarding the admissibility of evidence should be left to counsel.

Prior to trial, social workers should be prepared for direct and cross-examination. Social workers should be familiar with their notes since repeated reference to them decreases their credibility as witnesses. Workers should expect opposing counsel to probe for bias, inconsistencies, errors and omissions in testimony. As credibility is enhanced by academic qualifications and professional experience, a short biographical sketch may be provided to assist counsel in eliciting testimony regarding training, practical experience, degrees, awards, and publications. In addition, counsel should thoroughly discuss anticipated questions and answers to prepare the worker for the line of questioning at trial. (See Cynthia Bell and Wallace J. Mlyniec, *Preparing for a Neglect Proceeding: A Guide for the Social Worker*, 26 Juvenile Justice 29 (1975).)

Use of Clinical Services

The Department of Clinical Services is the part of the court's administrative services designed to provide court ordered psychiatric evaluation for some of the children and families involved in juvenile court proceedings.

When a referral to the Department of Clinical Services has been ordered by the court and the evaluation has been completed, the resulting Clinical Services report is hearsay and generally not admissible at trial. If all parties are willing to stipulate to the contents of the report, however, the report can be admitted into evidence. In lieu of a stipulation, the court psychiatrist who prepared the report can be called to testify as to the psychiatric evaluation and its results. Counsel should remember that psychiatric and psychological evidence can be used at trial only when dependency based on mental disability is alleged in the petition. (See Part III, Section C.) Note that the Clinical Services report is admissible at the dispositional hearing; however, in the event of a dispute over the conclusions and recommendations contained in the report, the psychiatrist who prepared the report can be called to testify as to the findings.

E. FINDINGS AT THE CLOSE OF THE EVIDENCE

The finding of neglect/dependency and the adjudication of wardship are jurisdictional and, consequently, mandatory before proceeding to the dispositional hearing. *In re Rosmis*, 26 Ill.App.2d 226, 167 N.E.2d 826 (1960). An additional finding, the specific finding of physical abuse, while not jurisdictional, is significant at the dispositional hearing.

Neglect/Dependency and Wardship Findings

After hearing all the evidence at trial the court decides whether or not the child is neglected/dependent. If not, the child is released to his/her parents and the petition is dismissed. If the court finds that the child is neglected/dependent and it is in the child's best

interests to be made a ward of the court, the court must, first, note in its findings that the child is neglected/dependent and, second, adjudge the child a ward of the court. The adjudication of wardship is final for purposes of appeal. Ill.Rev.Stat.1975, ch. 37, § 704-8(2).

Physical Abuse Finding

After a finding of neglect/dependency and an adjudication of wardship, the court in some circumstances enters an additional finding. When the court enters a finding of neglect/dependency based on evidence of physical abuse, the court may also enter a specific finding of physical abuse. § 704-8(2). When a specific finding of physical abuse has been entered by the court, the child can not remain in nor be returned to the custody of the parents until they have been found by the court to be fit to care for the child. § 705-2(c), § 705-2(d). The specific finding of physical abuse restricts alternatives at the dispositional hearing in that it forecloses the possibility of placing the child at home subject to court supervision until the parents are found to be fit at a later hearing.

F. THE DISPOSITIONAL HEARING

The dispositional hearing is the third major stage in the court process. At this hearing evidence is introduced concerning the proper disposition best serving the interests of the child and the public. Ill.Rev.Stat.1975, ch. 37, § 705-1(1). While the dispositional hearing can immediately follow the adjudicatory hearing, most often it is set for a later date.

Evidence

The types of evidence admissible in the dispositional hearing are much broader than those admissible in the adjudicatory hearing. During the trial, firsthand, factual, relevant information is admissible as evidence. During the dispositional hearing, all information helpful in determining the proper disposition for a child, including written and oral reports, may be admitted and relied upon to the extent of its probative value. § 705-1(1). It is at this stage that the social report prepared earlier by the case worker is considered by the judge. A Clinical Services report prepared by the court psychiatrist or an evaluation by an independent psychiatrist or psychologist, can be introduced at this time. Before making a final dispositional order the court must advise all concerned persons of the factual contents and conclusions of the reports considered by the court and afford fair opportunity to controvert the evidence. § 705-1(2). *In re Ross*, 29 Ill.App.3d 157, 329 N.E.2d 333 (1975); *In re Rosmis*, 26 Ill.App.2d 226, 167 N.E.2d 826 (1960). The court can order that the reports not be submitted to inspection, and the sources of confidential information not be disclosed, except to the attorneys for the parties. § 705-1(2).

After hearing all the testimony, including the recommendations of the caseworker, and examining any social and psychiatric reports, the court enters a dispositional order.

Placement of the Child

If a child is found to be "neglected" and adjudged a ward of the court, the court may issue a dispositional order to either continue or place the child in the custody of his/her parents or place the child elsewhere. § 705-2(c). Note that if a child is found to be dependent and adjudged a ward of the court, the court has no alternative but to place the child out of the home. § 705-2(d).

When the court continues or places the neglected child in the custody of his/her parents (§ 705-4), the court defines, by court order, the terms and conditions of the

in-home placement. This disposition is called a "5-4 Supervision". A 5-4 Supervision order could impose any of the following conditions on parents: participation in counseling, cooperation with arrangements for day care and medical follow-up for the children, acceptance of homemaker services and cooperation with the caseworker in carrying out the supervision order. This order may be modified or terminated at any time the court determines that it is in the best interests of the child to do so. (See Appendix D for an example of a 5-4 Supervision order.)

As explained earlier, if the court has entered a specific finding of physical abuse the child can not remain in nor be placed in the home subject to a 5-4 Supervision order. Consequently, 5-4 Supervision is more often ordered in neglect rather than abuse cases. A 5-4 Supervision order is frequently the preferred disposition when prior to trial the parents have indicated a willingness and an ability to cooperate with a specific treatment plan suggested by the caseworker. A 5-4 Supervision is often the result of an agreement by the parties (i.e. the parents will make an admission of neglect and the People of the State of Illinois will recommend to the court that the child remain at home pursuant to § 705-4); this agreement is somewhat comparable to plea bargaining in criminal cases.

It is important to distinguish between a 5-4 Supervision, which is an order entered at the dispositional hearing, and a "4-7 Supervision" (§ 704-7), which appears to be dispositional but is, in reality, a continuance granted before the adjudicatory stage. (See Part IV, Section D.) The court may use a 4-7 Supervision to continue the case, allowing the child to remain in his/her own home subject to conditions relating to parental conduct, supervised by the caseworker. This continuance under supervision can only occur before the court enters a finding of neglect/dependency. § 704-7(1). If the parents or the child objects to this continuance, the court must proceed with the adjudication. § 704-7(2). When the State agrees to a plan requesting the court to order a 4-7 Supervision, it may indicate that the State's evidence is weak. The State is usually reluctant to request a 4-7 Supervision because it is often difficult for the State to prove the allegations of the neglect/dependency petition after a violation of supervision has occurred due to the time lapse between the filing of the original petition and the trial. Because of this delay, witnesses may no longer be available and evidence may be stale.

Instead of continuing or placing the child in the custody of the parents, the court can place the child as authorized by § 705-7. This section makes available to the court three choices. First, the court can name a relative or other suitable person as guardian or custodian of the child. § 705-7(1)(a). Second, the court can name the Department of Children and Family Services as guardian of the child with the right to place the child in the custody of licensed foster parents. As a matter of procedure the court names the Guardianship Administrator of DCFS (at the present time, Richard S. Laymon) as guardian of the child. Although the foster parents have physical custody of the child, the authorization of the Office of the Guardianship Administrator is necessary to consent to the child's marriage, enlistment in the Armed Forces, legal proceedings, adoption, major medical or surgical treatment and application for a driver's license. § 705-7(1)(f). As a third alternative, seldom used, the court may place the child with an agency other than the Department of Children and Family Services. § 705-7(1)(c).

Note that before placing a child, the court must enter findings that the parents are unfit, unable (for some reason other than financial circumstances alone) or unwilling to care for the child and that it is in the best interests of the child to remove him/her from the custody of the parents. § 705-7(1).

Order of Protection

In addition to any other dispositional orders, the court may make an order of protection for a specified period of time setting forth reasonable conditions of behavior to be observed by any person who is before the court on the original or a supplemental petition. § 705-5. An order of protection enables the court to exert control over a person, not necessarily a party, who has a detrimental effect on the conduct of any of the parties to the proceedings. For example, a protective order may prohibit the person subject to the order from visiting the child or the home, § 705-5(1)(a). Such an order is frequently entered when a member of the household, not a parent, is responsible for the abuse of the child.

G. POST-DISPOSITIONAL CONCERNS

Legal Custody and Guardianship

Legal custody imposes on the custodian the responsibility of physical possession of the child and the duty to protect, train and discipline the child and to provide him/her with food, shelter, education and ordinary medical care. Ill.Rev.Stat.1975, ch. 37, § 701-12. Legal guardianship delegates more responsibility to the guardian in making important decisions in matters having a permanent effect on the life and development of the child. A guardian has the following responsibilities respecting the child subject to residual parental rights: authority to consent to marriage, to enlistment in the armed forces, to major medical or surgical treatment, and to represent the minor in legal actions and other decisions of legal significance. § 701-11.

It should be noted that even when the guardianship of the child has been removed from the parents, the parents still retain certain residual rights and responsibilities including the right to reasonable visitation, the right to consent to adoption, the right to determine the religious affiliation of the child and the responsibility for the child's financial support. § 701-16.

The court may require the legal custodian or the guardian of the child to report periodically to the court. § 705-8(1). When the Department of Children and Family Services is the guardian, the DCFS worker makes periodic progress reports informing the court of the child's adjustment to placement and the parents' rehabilitative efforts. Before changing the legal custodian or guardian the court must give the legal custodian or guardian notice and an opportunity to be heard in court. § 705-8(3).

Supplemental Petitions

At any time before the neglect/dependency petition is dismissed or before wardship is terminated, a supplemental petition may be filed by any adult person, any agency or association, or the court on its own motion requesting modification of a court order. § 704-1. Supplemental petitions are most commonly filed when the child or any interested person seeks a change in custody, either for the appointment of a new custodian or guardian, or for restoration of custody to the parents. § 705-8(3). A supplemental petition is also the vehicle for initiating a termination of parental rights proceeding and requesting the appointment of a guardian with power to consent to adoption. (See Amadio, *Adoption Handbook* (Ill. Dept. of Children and Family Services, 1976); *Illinois Juvenile Law and Practice* (Ill. Inst. for CLE, 1977) § § 8.15-8.20.)

Termination of Proceedings

A finding of wardship and a determination of guardianship can continue until the child reaches the age of 21 years, at which time wardship and guardianship terminate automatically. However, the court can terminate wardship and guardianship at any time the court determines it to be in the best interests of the child. § 705-11. This occurs either when the parents demonstrate sufficient rehabilitation to warrant the reinstatement of all rights or the child is freed for adoption. (See Ill.Rev.Stat.1975, ch. 4, § 9.1-1 *et seq.*; ch. 37, § 705-9.)

APPENDIX A

The Abused and Neglected Child Reporting Act

(Effective July 1, 1975)

AN ACT creating the Abused and Neglected Child Reporting Act and repealing and amending other Acts.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. This Act shall be known and may be cited as the Abused and Neglected Child Reporting Act.

Section 2. The Illinois Department of Children and Family Services shall, upon receiving reports made under this Act, protect the best interests of the child, offer protective services in order to prevent any further harm to the child and to other children in the family, stabilize the home environment and preserve family life whenever possible. In performing any of these duties, the Department may utilize such protective services of voluntary agencies as are available.

Section 3. As used in this Act unless the context otherwise requires:

"Child" means any person under the age of 18 years.

"Department" means Department of Children and Family Services.

"Local law enforcement agency" means the police of a city, town, village, or other incorporated area or the sheriff of an unincorporated area.

"Abuse" means any physical injury, sexual abuse or mental injury inflicted on a child other than by accidental means by a person responsible for the child's health or welfare.

"Neglect" means a failure to provide, by those responsible for the care and maintenance of the child, the proper and necessary support, education as required by law, or medical or other remedial care recognized under State law, other care necessary for the child's well-being; or abandonment by his parent, guardian or custodian; or subjecting a child to an environment injurious to the child's welfare.

Section 4. Any physician, hospital, surgeon, dentist, osteopath, chiropractor, podiatrist, Christian Science practitioner, coroner, school teacher, school administrator, truant officer, social worker, social services administrator, registered nurse, licensed practical nurse, director or staff assistant of a nursery school or a child day care center, law enforcement officer, or field personnel of the Illinois Department of Public Aid having reasonable cause to believe any child with whom they have direct contact has been subjected to abuse or neglect shall immediately report or cause a report to be made to the Department. In addition to the above persons required to report suspected child abuse and neglect, any other person may make a report if such person has reasonable cause to suspect a child has been abused or neglected.

This Section applies to cases of a child whose death occurs from suspected abuse or neglect before being found or brought to a hospital. A child whose parent, guardian or cus-

todian in good faith selects and depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care may be considered neglected or abused, but not for the sole reason that his parent, guardian or custodian accepts and practices such beliefs.

Section 5. Any physician who has before him a child he reasonably believes may be abused or neglected may take or retain temporary protective custody of the child without the consent of the child's parent or guardian, whether or not additional medical treatment is required, if the circumstances or conditions of the child are such that continuing in his place of residence or in the care and custody of the parent, guardian or custodian or other person responsible for the child's care, presents an imminent danger to the child's life or health. The physician taking or retaining a child in temporary protective custody must immediately notify the parents or guardian of the child and the Department. The Department shall promptly initiate proceedings under the Juvenile Court Act for the continued temporary custody of the child. For the purpose of this Section, temporary protective custody shall mean custody within a hospital or other medical facility.

Section 6. Any person required to investigate cases of suspected child abuse or neglect may take or cause to be taken, at Department expense, color photographs and x-rays of the area of trauma on the child who is the subject of a report.

Section 7. The report required by this Act shall be made immediately by phone or in person to the nearest office of the Department; and shall also be made in writing deposited in the U.S. mail, postage prepaid, within 24 hours after having reasonable cause to believe that the condition of the child resulted from abuse or neglect. Such reports may in addition be made to the local law enforcement agency in the same manner. In the event a report is made to the local law enforcement agency, the reporter shall so inform the Department. The Department shall initiate an investigation of each report of child abuse and neglect under this Act, whether oral or written, within 24 hours after the receipt of such report. The Department may delegate to law enforcement officials, other public agencies or to private social services agencies the performance of the investigation.

Section 8. The report required by this Act shall include the name and address of the child and his parents or other persons having his custody; the child's age; the nature of the child's condition including any evidence of previous injuries or disabilities; and any other information that the reporter believes might be helpful in establishing the cause of such abuse or neglect and the identity of the person believed to have caused such abuse or neglect.

Section 9. Any person, institution or agency, under this Act, participating in good faith in the making of a report, or in the investigation of such a report or in the taking of photographs and x-rays or in the retaining of a child in temporary protective custody shall have immunity from any liability, civil, criminal or that otherwise might result by reason of such actions. For the purpose of any proceedings, civil or criminal, the good faith of any persons required to report, or permitted to report, cases of suspected child abuse or neglect under this Act, shall be presumed.

Section 10. Any person who makes a report or who investigates a report under this Act shall testify fully in any judicial proceeding resulting from such report, as to any evidence of abuse or neglect, or the cause thereof. No evidence shall be excluded by reason of any common law or statutory privilege relating to communications between the alleged perpetrator of abuse or neglect, or the child subject of the report under this Act and the person making or investigating the report.

Section 11. The Department shall maintain a central registry of child abuse and neglect reports.

All reports contained therein shall be confidential. Any person who permits or encourages the unauthorized dissemination of information contained in the central registry of child abuse and neglect is guilty of a Class A misdemeanor. The Department shall, by regulation, regulate the entry and retention of child abuse and neglect information and access thereto.

Section 12. "An Act for the reporting of certain cases of physical abuse, neglect or injury to children, and to make an appropriation in connection therewith," approved March 31, 1965, as amended is repealed.

APPENDIX B

MEDICAL GLOSSARY

anal sphincter	band of muscles that encircle the anal orifice
cerebral contusion	bruising of brain tissue as a result of impact on skull
duodenal hematoma	blood clot within the muscle wall of the duodenum
duodenum	first segment of the small bowel, named because it is approximately twelve fingerbreadths in length
jejunum	the midsection of the small intestine which extends from the duodenum to the ileum
metaphyseal infraction or fragmentation	incomplete fracture of the metaphysis — the wider portion containing growth zone found at both ends of all the long bones (radius, ulna, tibia, fibula, femur, humerus)
perforated viscus	tear in any hollow body organ (intestine, gallbladder, stomach, etc.)
perineum	the skin and associated structures bounded by the genitals, anus and buttocks
perioral injuries	injuries around, about or inside the mouth
retinal hemorrhage	bleeding from the vessels supplying the neural tissue forming the back of the eye — seen only by viewing the back of the eye with instruments
subarachnoid hemorrhage	bleeding into the spinal fluid which circulates between the arachnoid (one of the covering membranes of the brain) and the brain itself; signifies serious rupture of blood vessels to the brain; caused by trauma or congenital malformation of blood vessels
subdural hematoma	an accumulation of blood between the dura and arachnoid, the two membranes of the brain; very serious because its expansion compresses the brain; always caused by trauma
subperiosteal calcification	a normal healing process of depositing calcium between the periosteum (a layer of cells on the outside of all bones) and the bone; seen only when the bone is injured; visible on x-ray approximately 10 days after injury

APPENDIX C

SAMPLE QUESTIONS FOR MEDICAL WITNESS

1. State your name.

2. What is your business or profession?

3. What medical school did you graduate from? When?

4. Are you licensed to practice medicine in the State of Illinois?

5. When were you first so licensed?

6. Were you engaged in any specialty during your training? If so, what specialty?

7. Are you engaged in any specialty in your practice? If so, what specialty?

8. For how many years have you practiced in your area of specialized training?

9. Approximately how many children have you examined or treated?

10. Are you associated with any hospitals? If so, what hospitals?

11. What is the nature of the position you hold there?

12. How long have you been associated with _____ Hospital?

13. During the course of your duties at _____ Hospital, did you have occasion to examine _____?

14. When and where?

15. Who else was present during the examination?

16. What was your method of examination?

17. Please describe the condition of _____ when you first examined _____.

18. (If photographs are available, after first laying a foundation via testimony of the photographer or other person present when the photographs were taken, or obtaining a stipulation, and marking photographs for identification, proceed with the following:)

    Doctor, I show you _____ photographs which have been marked for identification as People's Exhibits 1 through _____ and I ask you if these photographs truly and accurately portray the physical condition of _____ when you examined him/her on _____?

    (Move to have exhibits admitted into evidence.)

19. Did you ever have occasion to discuss with _____'s parents the circumstances surrounding _____'s injuries (or condition)?

When? Where? How many times?

Who else was present?

20. What did you say to them and what did they say to you concerning the origin of _____'s injuries (or condition) on each of these occasions?

21. (If the child is old enough to communicate) Did you ever have occasion to discuss with _____ the circumstances surrounding _____'s injuries (or condition)?

When? Where? How many times?

Who else was present?

22. What did you say to him/her and what did he/she say to you concerning the origin of the injuries (or condition) on each of these occasions?

23. After your initial examination on _____ of _____ did you make a diagnosis?

What was the diagnosis?

24. What if any treatment or other actions did you take on the basis of the diagnosis?

25. Doctor, during your _____ years of practice, have you had occasion to examine or treat other children with the injuries (or condition) you observed in your examination of _____?

26. Could you estimate the number of cases in that category that you have examined or treated?

27. Based on your experience, training and examinations of _____ on _____, do you have an opinion, within a reasonable degree of medical certainty, whether the injuries (or condition) which you observed could have occurred in the manner described by the parents?

28. What is that opinion?

29. Based on your experience, training and examinations of _____ on _____, do you have an opinion, within a reasonable degree of medical certainty, as to how the injuries were sustained (or what caused the condition)?

30. What is that opinion?

31. Upon what is that opinion based?

APPENDIX D

5-4 SUPERVISION ORDER **ORDER**

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT, JUVENILE DIVISION

In the Interest of: (Names of Children) **General No.**_____

This cause coming to be heard, the parties being present, and the court being fully advised as to the premises, it is hearby ordered:

That this cause be continued under Supervision for one year pursuant to Chapter 37 Section 705-4 of the Illinois Revised Statutes, and that

1. (Mother) will cooperate fully with the Department of Children and Family Services and will remain in couselling with (therapist), of the (agency), on a weekly basis.

2. (Child) and (child) will be enrolled in a day care program to be arranged by (agency) and the Department of Children and Family Services.

3. (Mother) will cooperate fully with the day care program, including being available for conferences, and having the children ready and appropriately dressed for day care.

4. (Mother) will bring (child) to (hospital) pediatric clinic for follow-up for his epileptic condition and for general medical care and will see that he takes the prescribed medication as ordered.

5. (Mother) will bring (child) to (hospital) for psychological and developmental evaluation.

6. (Mother) will begin regular medical care for (child) within two weeks, to be obtained at (hospital), or at another medical facility acceptable to (mother and therapist).

_____
Date

Judge _____

Deputy Clerk _____